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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,317	11/17/2003	Michael T. Stanhope	45634/319329 (1401)	5107
23370	7590	10/19/2006		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309				
EXAMINER RUDDOCK, ULA CORINNA				
ART UNIT 1771				
PAPER NUMBER				

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/715,317

Applicant(s)

STANHOPE ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 18, 2006, has been entered.
2. The Examiner has carefully considered Applicant's amendment and accompanying remarks. In view of Applicant's response, the double patenting rejection and the rejection in view of Sayers (US 3,729,920) has been overcome.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1-5, 8, 13-17, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6624096 to Thomas et al.

The Thomas reference teaches a flame resistant textile comprising a body of spun yarns of the type listed in claims 2 and 14 (col. 2, lines 22-33), and filament yarns woven in discrete positions. The filament yarns are aramid filaments, thus reading on claim 1 wherein a polyamide filament is recited. Thus, the limitations of claims 1-3, and 15 are met. The filament yarns are single yarns made of multiple filaments; therefore the limitations of both claims 4 and 5 (and 16-17) are

met. Regarding claims 8 and 20, the filament yarns have a denier of 200 to 1500 denier (col. 2, lines 59-60).

Regarding Applicant's newly added limitation, the Thomas reference specifically discloses that the weight ratio of the spun yarns to multi-filament yarns should range from 85:15 to 92:8 (col 2, ln 15-17) and further discloses that the spun yarns have a much greater presence in the fabric than the multifilament yarns (multifilament yarn is inserted among the spun yarns at an insertion ratio of 1:5 to 1:20; col 2, ln 17-19). As a result, it is the Examiner's position that the multifilament yarns, which are being equated to Applicant to Applicant's "relatively tough yarns" would be shielded from abrasion. Therefore, the rejection is maintained.

#### ***Claim Rejections - 35 USC § 103***

5. Claims 6, 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6624096 to Thomas as applied to claim 1 above. The Thomas reference discloses aramid fibers, and is silent with respect to the materials of claims 6, 7, 18 and 19. Despite the lack of explicit teaching of the claimed materials, PBO, HDPE, aramid, and the like, are known functional equivalents in the art, having similar strength, toughness, and resilience characteristics. It has been held to be within the general level of skill of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to select any of the above materials as desired.

#### ***Response to Arguments***

6. Applicant's arguments filed September 18, 2006, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the Thomas reference fails to

disclose that the fabric can shield at least some of the relatively tough yarns from abrasion. This argument is not persuasive because the Thomas reference specifically discloses that the weight ratio of the spun yarns to multi-filament yarns should range from 85:15 to 92:8 (col 2, ln 15-17) and further discloses that the spun yarns have a much greater presence in the fabric than the multifilament yarns (multifilament yarn is inserted among the spun yarns at an insertion ratio of 1:5 to 1:20; col 2, ln 17-19). As a result, the multifilament yarns, which are being equated to Applicant to Applicant's "relatively tough yarns" would be shielded from abrasion. Therefore, the rejections are maintained.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UCR *ucr*

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
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